

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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GLORIA ROGERS.

Plaintiff,

V.

CAROLYN W. COLVIN

Defendant.

Case No. 2:13-CV-01764-APG-VCF

ORDER

(Dkt. #18, #22, #24)

Magistrate Judge Ferenbach issued a Report and Recommendation (Dkt. #24)

recommending I find the administrative law judge (“ALJ”) did not err by finding plaintiff Gloria Rogers does not suffer from a severe mental impairment. Judge Ferenbach further recommends I find the ALJ’s rejection of Dr. Richard Yao’s psychological evidence was supported by substantial evidence. However, Judge Ferenbach recommends that I remand to the Social Security Administration because the Commissioner failed to meet her burden of production to show a significant number of other jobs exist in the national economy that Rogers can perform. Rogers did not object to Judge Ferenbach’s Report & Recommendation. Defendant Carolyn Colvin, Acting Commissioner of Social Security, objects to Judge Ferenbach’s final recommendation. Colvin argues the ALJ’s citation to the Medical-Vocational Guidelines suffices to support a finding that a significant number of jobs exist in the national economy that Rogers can perform.

Having reviewed the administrative record de novo, I accept Judge Ferenbach's first two recommendations. However, I do not accept Judge Ferenbach's third recommendation. The ALJ considered Rogers' residual functional capacity for the full range of sedentary work, as well as Rogers' age, education, and work experience. Based on these factors, the ALJ found Rogers was not disabled pursuant to the Medical-Vocational Guidelines, Rule 201.21. In the absence of severe non-exertional limitations that would render the Guidelines inapplicable, reference to the

1 Guidelines' grids suffices to establish that a significant number of jobs exist in the national
2 economy that Rogers can perform given her age, education, experience, and residual functional
3 capacity. *See Heckler v. Campbell*, 461 U.S. 458, 461-62 (1983); *Hoopai v. Astrue*, 499 F.3d
4 1071, 1075-76 (9th Cir. 2007).

5 IT IS THEREFORE ORDERED that the Report and Recommendation (Dkt. #24) is
6 accepted in part and rejected in part and defendant Carolyn W. Colvin's objection (Dkt. #25) is
7 sustained.

8 IT IS FURTHER ORDERED that plaintiff Gloria Rogers' motion to remand (Dkt. #18) is
9 denied.

10 IT IS FURTHER ORDERED that defendant Carolyn W. Colvin's cross-motion to affirm
11 is granted.

12 IT IS FURTHER ORDERED that the clerk of court shall enter judgment in favor of
13 defendant Carolyn W. Colvin and against plaintiff Gloria Rogers.

14 DATED this 27th day of April, 2015.

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16 ANDREW P. GORDON
17 UNITED STATES DISTRICT JUDGE
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